



PM# 42591019

VOLUME NINE ISSUE THREE • FALL ISSUE 2017

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Saskatchewan Joins the Patent Box Party

New Tax Incentives for R&D

Underpinning the new Act is the reduction of a business's corporate income tax rate from 12 to 6 per cent on all income derived from an intellectual property development.

BY JOSEPH A. GILL, MCKERCHER LLP



On June 30, 2017, the Government of Saskatchewan proclaimed *The Saskatchewan Commercial Innovation Incentive (Patent Box) Act* (SCII) into force. The SCII puts Saskatchewan in company with fellow provinces B.C. and Quebec, as well as countries such as the United Kingdom, Israel and China, which also offer similar “patent box” regimes. As stated in the 2017-18 provincial budget, “Saskatchewan must seek new and efficient means to facilitate the commercialization of IP”. The SCII is the province’s offering as far as incentivizing intellectual property (IP) development.

The “carrot” underpinning the SCII is reducing a business’s corporate income tax rate from the standard provincial 12 per cent to 6 per cent on all income derived from the qualifying IP. For the purposes of the SCII, IP can include both (i) patents, trademarks, copyright, industrial designs, and any other type of intellectual property recognized by the Canadian Intellectual Property Office and related agencies

of Canada or an equivalent authority in a country other than Canada (e.g. U.S. Patent and Trademark Office), and (ii) unregistered IP. This tax rate reduction applies for a period of 10 years and can be extended to 15 years if 50 per cent or more of the research and development (R&D) related to the IP occurs in Saskatchewan.

Set out below is a step-by-step analysis of the SCII process:

- 1. Initial Application** - Completion of a standardized application form and submission to the Ministry of the Economy (MOE). The form is available online (<http://www.saskatchewan.ca/innovation-incentive#how-to-apply>) and asks for information concerning (i) the business, and (ii) technical details of the IP itself.
- 2. Scientific Eligibility Test** - The National Research Council of Canada Industrial Research Assistance Program will serve as the technical assessor for determining whether

the IP satisfies one of the following requirements:

- a. It has no equivalent in the Canadian marketplace;
- b. It is a substantial advance on the current state of the art, with respect to any comparable good, service or process, in Canada; or
- c. It has unique features and benefits that materially distinguish it from current competitive offerings in the Canadian marketplace to the extent that the innovation has potential to create a competitive advance or an entirely new segment of the marketplace.

Additionally, the IP must be at a model or prototype stage that represents a near desired configuration for the IP.

- 3. Eligible Corporation** - The business must meet the following requirements:

- a. Its only activities are the development and commercialization of the IP that is the subject of the application; and
 - b. It is not exempt from tax under the federal Income Tax Act (e.g. non-profit organization, charities, municipal and crown corporations)
- 4. Economic Benefits to Saskatchewan** The business must satisfy two of the following five benchmarks (which can be satisfied over any period of time):
- a. \$3 million in R&D expenditures in Saskatchewan (including labor costs);
 - b. Create and maintain 10 net new full-time employees (or full-time equivalent) that are a direct result of the IP;
 - c. \$10 million in net new capital expenditures in Saskatchewan;
 - d. \$3.5 million in new Saskatchewan corporate income tax paid; or
 - e. Satisfy a new economic benchmark(s) pre-approved by


the MOE (i.e. applicant proposes this benchmark);

- 5. Tax Return** - Once successful, the business will receive an SCII Certificate, which entitles it to claim the SCII tax credit on its income tax returns for the next 10 (or possibly 15) years. On a yearly basis, the business must also ensure that the following information is provided to the MOE: (i) copy of the SCII Certificate, (ii) copy of the business's T2 corporate income tax return, (iii) Canada Revenue Agency notice of assessment for the particular tax year; and (iv) any other information that the MOE may prescribe.

Aside from the process for application, interested businesses should also note:

- **Non-Saskatchewan Business** - The SCII is open to out-of-province companies provided they satisfy the Saskatchewan economic benefits tests noted above.
- **Seven-Year Timeline** - The SCII is currently only available until June 30, 2024 (i.e. last application will be processed on this date).

- **Complementary R&D Tax Credit** - The government also introduced a refundable 10 per cent R&D tax credit related to the first \$1 million in annual qualifying expenditures incurred in Saskatchewan by Canadian-controlled private corporations. In all other cases, the credit is non-refundable and can be applied against Saskatchewan corporate tax owed in the subsequent ten years. Eligibility parallels the federal Scientific Research and Experimental Development Tax Credit. See here for more information about the R&D Tax Credit: <http://publications.gov.sk.ca/documents/310/93230-2017%20SK%20Business%20Incentives.pdf>

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